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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

CHRISTOPHER WAYNE NEFF  
et al.,

Defendants and Appellants.

B284776

(Los Angeles County  
Super. Ct. No. MA068976)

APPEAL from a judgment of the Superior Court of Los Angeles County. Kathleen Blanchard, Judge. Affirmed in part, reversed in part and remanded with directions.

John L. Staley, under appointment by the Court of Appeal, for Defendant and Appellant Christopher Wayne Neff.

Paul Kleven, under appointment by the Court of Appeal, for Defendant and Appellant Greg Alan Stangeland.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Shawn McGahey Webb and Shezad H. Thakor, Deputy Attorneys General, for Plaintiff and Respondent.

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Greg Alan Stangeland (Stangeland) and Christopher Wayne Neff (Neff) (collectively appellants) were charged with attempted murder (Pen. Code, §§ 187, subd. (a) & 664; count 1)<sup>1</sup> and assault with a deadly weapon while confined in a state prison (§ 4501, subd. (a); count 3). Separately, Stangeland was charged with assault with a deadly weapon and by means of force likely to produce great bodily injury while undergoing a life sentence in state prison (§ 4500; count 2). With respect to counts 1 and 2, it was alleged that appellants used a deadly weapon (§ 12022, subd. (b)(1)). With respect to all three counts, it was alleged that appellants personally inflicted great bodily injury upon the victim (§ 12022.7, subd. (a)). As to Neff, it was alleged that he had been convicted of a serious felony pursuant to section 667, subdivision (a)(1) and the “Three Strikes” law. As to Stangeland, it was alleged that he had been convicted of five such felonies.

A jury found appellants guilty of attempted voluntary manslaughter (§§ 192, subd. (a) & 664), a lesser-included offense of count 1. It found Stangeland guilty on count 2 and Neff guilty on count 3.<sup>2</sup> The jury found true the great bodily injury and weapon use allegations. Stangeland admitted two prior convictions and Neff admitted one prior conviction.

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<sup>1</sup> All further statutory references are to the Penal Code unless otherwise indicated.

<sup>2</sup> According to Stangeland, the jury did not reach a verdict on count 3 as to him. Further, as to Stangeland, that count was dismissed by the trial court in the furtherance of justice pursuant to section 1385.

Stangeland was sentenced to an aggregate term of 41 years to life on count 2 as follows: 27 years to life (§ 1170.12, subd. (c)(2)(A)(i)), plus an additional five years for each of the two admitted priors, plus three years for the great bodily injury enhancement and one year for the deadly weapon enhancement. The sentence as to count 1 was 39 years to life. That sentence was stayed (§ 654).

Neff was sentenced to 20 years in state prison on count 1 as follows: five and a half years as to count 1, doubled to 11 years based on the prior strike, plus three years for the great bodily injury enhancement, one year for the deadly weapon enhancement, and five years for the serious felony enhancement (§ 667, subd. (a)). The trial court imposed but then stayed a 20-year sentence on count 3 (§ 654).

Stangeland posits that his convictions should be reversed because there was insufficient evidence to support the specific intent to kill with respect to counts 1 and 2, and because the trial court erred when it denied his *Pitchess*<sup>3</sup> motion. Alternatively, he argues there was insufficient evidence that he inflicted great bodily injury on the victim and is subject to an enhancement. We affirm Stangeland's conviction on count 1. We reverse his conviction on count 2 and the great bodily injury enhancement due to insufficiency of the evidence. The matter is remanded for resentencing.

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<sup>3</sup> *Pitchess v. Superior Court* (1974) 11 Cal.3d 531 (*Pitchess*) established that criminal defendants have a right to discover citizen complaints found in peace officer personnel files. This rule was codified by the Legislature in 1978. (*People v. Jordan* (2003) 108 Cal.App.4th 349, 359–360.)

Neff argues that his convictions should be reversed because there was insufficient evidence of the specific intent to kill with respect to count 1, and because the trial court erred when it refused to give a self-defense instruction. In addition, Neff joins arguments made by Stangeland. We reverse the great bodily injury enhancement but otherwise affirm the convictions. The matter is remanded for resentencing.

At oral argument, both defendants requested a remand so the trial court can consider whether to exercise its discretion under Senate Bill No. 1393 (2017-2018 Sess.) (SB No. 1393) to strike or dismiss the five-year serious felony enhancements. Upon remand, the trial court shall consider whether to strike or dismiss any or all of the five-year serious felony enhancements.

## **FACTS**

### **Prosecution Case**

The victim in this case is Bryant Salas (Salas). He was stabbed while he was in prison serving time for murder, attempted murder, robbery, assault with a deadly weapon, and making criminal threats. At the time of the attack, Salas was under the influence of heroin, which may have affected his memory.

Salas testified that in July 2015, he was in the prison yard with more than a 100 other inmates. Prison staff announced a yard recall over a loudspeaker, and Salas gathered with other inmates near a gate to reenter one of the housing units. While he was standing in line, someone punched him in the nose, which caused his vision to blur. He “balled up”—covered his face and head—and blindly swung his fists. Salas felt his body being hit. At that point, he moved toward a basketball court in the yard.

He did not know who hit him or whether it was more than one person.

The whole interaction took 10 to 15 seconds.

Correctional Officers Frank Garcia and Chad Curry testified that they saw inmates fighting on the basketball court. Officer Curry could not see whether any of the three inmates was using a weapon. Appellants were swinging their fists toward Salas as he backpedaled. Stangeland landed punches to Salas's upper torso and face or head area. Officer Garcia radioed an observation officer to "put the yard down," an order requiring him to activate an alarm and use the public address system to instruct the inmates to get on the ground. Next, Officer Garcia ran toward the basketball court. The appellants were continuing to strike Salas, who was holding his arms out in front of himself with his palms facing forward and fingers outstretched as he continued to back up. Stangeland used both of his hands to punch Salas in the head, face, and torso. According to Officer Curry, he saw Stangeland ball up both his fists, jab with his left and swing the right from the side. In concert, Neff lunged forward and struck Salas on his back. Officer Curry ordered appellants to stop and get down on the ground, but they refused. This prompted Officer Curry to deploy an instantaneous blast grenade designed to disperse a chemical agent that irritates the eyes and mucus membranes. It landed past Salas and the appellants. Before it went off, Stangeland made a "[h]orizontal move, strike[.]" Officer Garcia described it as a "horizontal strike with the top of the hand in the direction of Salas." There was no evidence Stangeland made contact. Once there was an explosion from the grenade, the appellants and Salas stopped fighting and separated from each other. Stangeland threw an orange metallic

object behind him and it landed about five feet away. Officer Curry did not see any red on the object. Neff dropped an object from his right hand. All three inmates got on the ground.

As instructed by Officer Curry, Correctional Officer Paul Beltran picked up the metallic object discarded by Stangeland. It was a shank that was a “half-inch metal stock sharpened to a point” wrapped in an orange shoelace. Officer Beltran discovered another shank on the ground to the right of Neff’s head. It was a bent nail wrapped in a white shoelace as well as a piece of blue sheet. There was a third shank on the ground underneath a white T-shirt, which was about a foot away from Neff.

It is common for correctional officers to find weapons on the ground in the yard after an incident. Inmates discard them to avoid adverse consequences.

Correctional Sergeant Greg Johnson took charge of the scene and made sure that the inmates were checked for injuries. Neither Neff nor Stangeland had sustained any. In contrast, blood was coming down from Salas’s forehead. Officer Garcia lifted up Salas’s shirt and Sergeant Johnson observed that Salas had puncture wounds with active bleeding. Officers Garcia and Curry escorted Salas to the medical clinic on the yard. Neff and Stangeland were placed in administrative segregation.

Stangeland was examined. He had blood on his hands and right forearms. No blood or DNA<sup>4</sup> evidence was collected from the weapon that Officer Curry saw Stangeland drop in the yard.

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<sup>4</sup> DNA refers to deoxyribonucleic acid. (*People v. Venegas* (1998) 18 Cal.4th 47, 52.)

A Department of Corrections nurse evaluated Salas. At some point, he was photographed. The photographs depicted abrasions on Salas's nose, wrist and neck, and four puncture wounds (two on the back, one on the rib cage, and one on the arm). When testifying, Salas confirmed that he had abrasions on his neck. He described the puncture wound to his rib cage as a hole with a little drip of blood. Other than the blow to his nose, Salas had not felt his injuries. He was not aware of them until he was examined. The nurse concluded that Salas needed further medical attention. Asked at trial why, the nurse stated, "[W]hen someone has a puncture wound, we have a serious issue." The nurse believed that one of his colleagues probably called 911.

Salas was transported to a hospital, where he stayed overnight. He testified that "[t]hey didn't bandage" him or give him stitches. After he left the hospital, he cleaned three or four areas. In his opinion, "it wasn't really bad" and the wounds were "just, like, superficial." He said the wounds on his chest looked like scrapes. Though there was a hole there, it was very small. According to Salas, he did not feel pain until the day after the incident. He testified that the pain lasted maybe a week.

The medical records described Salas's neck abrasions as stab wounds that did not penetrate the skin. Also, they reported that per Salas, the pain related to his various stab wounds was moderate.

Neff requested a disciplinary hearing. His request was granted, and the hearing was conducted on September 14, 2015. He made the following statement: "I stabbed Salas. I take responsibility. [Stangeland] never battered Salas with a weapon. I had the weapons."

Correctional Officer Duane Bennett, a lieutenant at the time, compiled a report that summarized other reports. His report indicated that Salas possessed a weapon during the incident. At trial, Lieutenant Bennett testified that his report should have stated that Salas did not possess a weapon. He discovered his mistake after reviewing the reports of various prison staff members.

The parties stipulated that appellants were confined in state prison on July 10, 2015, and that Stangeland was serving a life sentence.

#### **Defense case**

Appellants did not present any evidence on their behalf.

#### **Jury Instructions**

Among other instructions, the trial court instructed the jury on aiding and abetting.

### **DISCUSSION**

#### **I. Counts 1 and 2.**

Stangeland and Neff challenge the sufficiency of the evidence to support findings that they acted with the intent to kill Salas for purposes of counts 1 and 2.

Based on these challenges, we must determine whether the evidence and reasonable inferences were sufficient to allow the jury to find intent to kill beyond a reasonable doubt. (*People v. Solomon* (2010) 49 Cal.4th 792, 811–812 (*Solomon*) [the record must contain substantial evidence from which a reasonable trier of fact could find a defendant guilty beyond a reasonable doubt].) “The courts have defined substantial evidence to be evidence of ponderable legal significance, evidence that is reasonable, credible and of solid value. [Citation.] Inferences constitute substantial evidence, but only if they are the product of logic and



reason. Speculation or conjecture alone is not substantial evidence. [Citation.]” (*Minnegren v. Nozar* (2016) 4 Cal.App.5th 500, 507.)

A. Relevant Law.

The specific intent to kill is an element of the crime of assault by a life prisoner as well as the crime of attempted voluntary manslaughter. (*People v. Jeter* (2005) 125 Cal.App.4th 1212, 1216 [section 4500 requires malice aforethought, which requires either intent to kill or knowledge of the danger to, or conscious disregard for, human life]; *People v. Montes* (2003) 112 Cal.App.4th 1543, 1549–1550.)

“Evidence of a defendant’s mental state of mind is almost inevitably circumstantial, [and] circumstantial evidence is as sufficient as direct evidence to support a conviction. [Citation.]” (*People v. Ferrell* (1990) 218 Cal.App.3d 828, 835.) A defendant’s specific intent can be inferred from the circumstances of the act, the manner in which it is done, and the means used, among other factors. (*Id.* at p. 834.)

B. Neff.

There was substantial evidence that Neff had the specific intent to kill Salas. Neff confessed that he and only he stabbed Salas. The stabbing occurred after Salas was punched in the nose and was suffering blurred vision. Though he tried to fight back, he was backpedaling. At different times, he was either trying to protect his head and face or was holding his hands out, palms facing forward and fingers splayed. Despite his defensive posture, Neff kept attacking. Though Salas did not suffer severe injuries, the severity or lack of severity of his injuries is less important than the placement of the stabs. The record establishes that Salas suffered puncture wounds to the rib cage

and back as well as his arm, and two stabbing related abrasions on his neck. The stabs to his rib cage and back were extremely dangerous because they could have punctured internal organs, and the stabs to the neck could have severed major arteries. The locations of these stabbings, by themselves, strongly indicate lethal intent. Moreover, substantial evidence established that Salas was under the influence of heroin and not armed. Thus, for the most part, he was defenseless.

Given the totality of circumstances, the jury reasonably inferred that Neff's actions indicated his intent to cause Salas's death. (See *People v. Avila* (2009) 46 Cal.4th 680, 702 [repeatedly stabbing an unarmed and trapped victim demonstrates defendant's intent to kill]; see *People v. Bolden* (2002) 29 Cal.4th 515, 561 [in plunging a knife five to six inches deep into the victim's back and penetrating the victim's lungs and spleen, the defendant "could have had no other intent than to kill"].)

### C. Stangeland.

At most, the evidence shows that Stangeland swung his arms at Salas. No witness placed a weapon in Stangeland's hand during the fight. No blood or DNA was recovered from the shank that he discarded. Neff claimed he stabbed Salas, not Stangeland. Moreover, it is speculative to say that because Stangeland possessed a shank during the fight, he must have tried stabbing Salas. Because there is no solid, credible evidence that Stangeland stabbed Salas, and no evidence that Stangeland attempted to stab Salas with the discarded shank, there is insufficient evidence that Stangeland was a direct perpetrator of the crimes charged in count 1 and count 2. (§ 31 [any person who directly commits the act constituting the offense is a principal in any crime so committed].)

The conviction on count 2 must be reversed.

The question remains, however, whether Stangeland was properly convicted on count 1 under an aiding and abetting theory. Aiding and abetting the commission of a crime makes an accomplice a principal in the crime. (*People v. McCoy* (2001) 25 Cal.4th 1111, 1116–1117 (*McCoy*); § 31 [a person is a principal in a crime if he or she aids and abets its commission].) When the offense charged is a specific intent crime, the accomplice must share the specific intent of the perpetrator. This occurs when the accomplice knows the full extent of the perpetrator’s criminal purpose and gives aid or encouragement with the intent or purpose of facilitating the perpetrator’s commission of the crime. Here, pursuant to *McCoy*, Stangeland cannot be guilty of attempted voluntarily manslaughter unless the evidence shows that he shared Neff’s intent to kill Salas. (*McCoy, supra*, 25 Cal.4th at p. 1118.)

The evidence indicated that Neff and Stangeland were both armed with shanks and attacked Salas in concert. Moreover, the attack lasted for 10 to 15 seconds. The inference is that the attack was planned. Further, because Stangeland attacked Salas in concert with Neff, this rendered Salas less able to defend against Neff’s stabbing attempts. From these facts, the jury could have reasonably concluded that Stangeland and Neff shared the same intent to kill Salas.<sup>5</sup>

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<sup>5</sup> We asked for and received letter briefs from the parties as to whether Stangeland’s conviction on count 1 can be affirmed on an aiding and abetting theory.

## **II. The Great Bodily Injury Enhancements.**

An enhancement that increases the penalty beyond the prescribed statutory maximum punishment for a crime requires a jury to find every element of that enhancement beyond a reasonable doubt. (*People v. Sengpadychith* (2001) 26 Cal.4th 316, 326.) In examining whether the great bodily injury enhancement is supported by the evidence presented, we employ the same standard of review that was set forth in *Solomon*, *supra*, 49 Cal.4th at pages 811–812.

“Great bodily injury ‘means a significant or substantial physical injury.’” (*People v. Cross* (2008) 45 Cal.4th 58, 63.) The proof necessary to establish the enhancement “is commonly established by evidence of the severity of the victim’s physical injury, the resulting pain, or the medical care required to treat or repair the injury.” (*Id.* at p. 66.) There is a fine line between an injury that is significant or substantial and one that is not. In most situations, a trier of fact’s determination will be upheld. (*People v. Wolcott* (1983) 34 Cal.3d 92, 107.) Case law provides, however, that injuries that are transitory and short-lived bodily distress do not qualify. (*Ibid.*)

We conclude that the prosecution failed to establish great bodily injury. Salas did not know he had suffered puncture wounds until he was evaluated by a nurse who worked for the Department of Corrections, and he did not feel any pain until the next day. The pain lasted only a week. Though Salas was sent to a hospital and stayed overnight, his wounds were not bandaged or stitched. In his opinion, “it wasn’t really bad” and the wounds were “just, like, superficial.” He said the puncture wound on his chest looked like a scrape. Though there was a hole, it was very small. He described the puncture on his rib cage as a hole with a

drip of blood. There was evidence that Salas suffered an abrasion to his nose, and that he was bleeding from his forehead. Also, he suffered abrasions to his neck. But nothing established that the injuries qualified as substantial or significant injuries. Thus, the evidence established that Salas suffered transitory and short-lived bodily distress, not great bodily injury.

The People argue that because Salas suffered at least four puncture wounds, a bleeding forehead, and an abrasion to the nose, and because the nurse testified that the puncture wounds were a serious issue, the evidence established great bodily harm for purposes of the enhancement. The problem for the People is that the only description of the severity of the wounds and injuries came from Salas. Although the nurse testified that the puncture wounds were a serious issue, he did not elaborate as to why or describe the wounds. Without more, his ambiguous testimony invited the jury to speculate as to what the nurse meant. According to the People, Salas's testimony is merely conflicting evidence that should be disregarded. We disagree. Whether he minimized his injuries (as the People suggest), there was simply no substantial evidence contradicting Salas's testimony regarding the severity of his wounds.

The great bodily injury enhancement must be reversed due to insufficiency of the evidence.

### **III. Absence of a Self-Defense Instruction.**

Neff claims he was entitled to a self-defense instruction. As we discuss, his claim fails.

While the trial court was discussing jury instructions with the prosecutor and defense counsel, defense counsel lodged an objection to the lack of a self-defense instruction. He stated: "[There was] [n]o evidence as to how the fight started, and

therefore, jurors . . . could draw the conclusion that either they were mutual aggressors or [Neff was] acting in self-defense . . . because it's a reasonable interpretation of the evidence." The trial court refused to give the requested instruction, stating, "Here's the problem. . . . So [the instruction] indicates the right of self-defense is only available to a person who engages in mutual combat under certain situations, that being that the person who engages in mutual combat has actually tried in good faith to refuse to continue fighting, has caused his opponent to be aware that he wants to stop fighting, and caused his opponent to be aware that he has stopped fighting and has given his opponent the opportunity to stop fighting. [¶] There's no evidence of any of this in . . . trial."

We conclude that the trial court ruled correctly.

A trial court must instruct on general principles of law applicable which are closely and openly connected with the facts in evidence. (*People v. Gutierrez* (2009) 45 Cal.4th 789, 824.) This obligation applies to defenses that are supported by substantial evidence. (*People v. Oropeza* (2007) 151 Cal.App.4th 73, 78.) As applicable to this case, the trial court had an obligation to instruct as requested only if a reasonable jury could have found that Neff acted in self-defense. (*People v. Breverman* (1998) 19 Cal.4th 142, 159.)

For Neff to prevail on appeal, the evidence below had to show that he was in fear of imminent harm and "actually and reasonably believe[d] in the need to defend" himself. (*People v. Humphrey* (1996) 13 Cal.4th 1073, 1082.)

There is no evidence that Neff had an actual or reasonable belief in the need to defend himself against Salas. Salas was hit in the nose and suffered blurred vision just prior to being

attacked by Neff and Stangeland. The correctional officers saw Salas backing up as Neff and Stangeland repeatedly pressed forward and attacked. Salas tried to protect his head and face, and put his hands out, palms forward and fingers splayed. No weapon was found on Salas. Though he suffered injuries, Neff was not harmed during the incident. Accordingly, a reasonable jury could not have found that Neff was in imminent fear of harm and had an actual and reasonable belief in the need to defend himself against Salas.

We are not persuaded to a contrary conclusion by Neff's suggestion that Salas was armed and that he attacked Neff first based on the existence of three shanks at the scene, and based on Lieutenant Bennett's report that Salas was armed. Though three shanks were found near where the altercation occurred, no evidence suggested that one of them belonged to Salas. Even if one did belong to him, no evidence suggested that he used it to attack Neff. Finally, Lieutenant Bennett was not an eyewitness to the incident. His report was simply a compilation of other reports. He testified that no other reports stated that Salas was armed, and that his report was in error. His mistaken report, which was not based on personal knowledge, was insufficient to suggest that Salas was an armed aggressor who precipitated the incident and caused Neff to defend himself.

#### **IV. *Pitchess*.**

Both defendants contend that the trial court erred when it denied Stangeland's *Pitchess* motion.

##### **A. Relevant Proceedings.**

Stangeland filed a motion for discovery of complaints against Officer Garcia, Officer Curry and Correctional Officer M. Padilla<sup>6</sup> relating to topics such as violation of constitutional rights, fabrication of evidence and perjury. Defense counsel provided a declaration stating that, according to Stangeland, he had a heated argument with Salas but at no point did he chase Salas or make any striking or punching motions toward Salas, and at no point did he drop an object or weapon on the prison yard. After defense counsel noted the discrepancy between Lieutenant Bennett's report and the reports of the other witnesses regarding whether Salas was armed, defense counsel concluded that the reports established that Officer Garcia had fabricated evidence. Next, defense counsel suggested that Officer Curry falsely stated that Stangeland discarded an object on the yard because Officer Garcia and Officer Padilla were watching the same area and did not see what Officer Curry allegedly saw. Defense counsel suggested that likely trial issues would be whether Stangeland possessed a shank and assaulted Salas, and that the requested discovery was necessary for, inter alia, impeachment as well as locating and investigating witnesses.

Stangeland attached reports from Lieutenant Bennett, Officer Curry, Officer Garcia and Officer Padilla to the *Pitchess* motion. Those reports described the following details: Neff and

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<sup>6</sup> The record indicates that Officer Padilla activated the yard alarm.



Stangeland attacked Salas as Salas was moving away and ended up on a basketball court. They were ordered to stop fighting and refused. Officer Curry tossed an instantaneous blast grenade and saw Stangeland back away from Salas and throw a metallic object behind him. Neff, Stangeland and Salas all got down on the ground. Lieutenant Bennett's report said Salas was found in possession of a weapon, and that he had suffered puncture wounds.

Neff also filed a *Pitchess* motion.

At the hearing on the *Pitchess* motions, the trial court stated that Stangeland's allegations failed to establish any plausible factual foundation for the alleged misconduct. His motion was denied.

The trial court's minute order stated that Neff's motion was "placed off calendar[.]"

B. Relevant Law; Standard of Review.

To obtain peace officer personnel records, a party must file a *Pitchess* motion that identifies the discovery sought and establishes good cause for compelling its production. (Evid. Code, § 1043, subds. (a)-(b).)

Our Supreme Court has explained that "a showing of good cause requires a defendant . . . to establish not only a logical link between the defense proposed and the pending charge, but also to articulate how the discovery being sought would support such a defense or how it would impeach the officer's version of the events." (*Warrick v. Superior Court* (2005) 35 Cal.4th 1011, 1021 (*Warrick*).) Moreover, a defendant must show a plausible factual foundation for the discovery, i.e., a plausible scenario. (*Id.* at p. 1026). "[A] plausible scenario of officer misconduct is one that might or could have occurred. Such a scenario is plausible

because it presents an assertion of specific police misconduct that is both internally consistent and supports the defense proposed to the charge.” (*Ibid.*) Once good cause is established, a trial court shall examine the information in camera and determine what discovery the defendant is entitled to receive in order to ensure a fair trial. (*City of Santa Cruz v. Municipal Court* (1989) 49 Cal.3d 74, 82–85.)

A trial court’s ruling on a *Pitchess* motion is reviewed for an abuse of discretion. (*City of San Jose v. Superior Court* (1998) 67 Cal.App.4th 1135, 1145.)

C. Analysis as to Neff.

Neff seeks to join Stangeland’s *Pitchess* argument. As the People point out, Neff is barred from doing so. He did not join in Stangeland’s motion below. Consequently, Neff cannot raise a *Pitchess* argument on appeal. (*In re Seaton* (2004) 34 Cal.4th 193, 200 [“a defendant generally may not raise *on appeal* a claim not raised at trial”].)

To obtain review, Neff posits that he filed his own *Pitchess* motion but that it was taken off calendar. He states, “There was no point in appellant renewing the motion because it had already been denied.” Citing *People v. Hill* (1998) 17 Cal.4th 800, 820 (*Hill*), he states that renewing his own motion would have been futile. Impliedly, he suggests we should assume that he joined Stangeland’s motion below and was aggrieved by its denial. *Hill* is inapposite. It held only that a defendant need not object to prosecutorial misconduct and request an admonition if it would have been futile. (*Ibid.*)

In any event, as we discuss below, the argument advanced by Stangeland lacks merit.

D. Analysis as to Stangeland.

When a trial court has defense counsel's declaration plus peace officer reports and any other pertinent documents, the trial court considers them in conjunction in determining whether a defendant's contentions establish a plausible scenario. (*Warrick, supra*, 35 Cal.4th at p. 1025.)

The declaration filed by Stangeland's defense counsel presented a factual scenario in which Salas and Stangeland were merely engaged in a heated argument, in which Officers Curry, Garcia and Padilla lied about Stangeland attacking Salas, and in which Officer Curry lied about Stangeland discarding a shank. This factual scenario is not internally consistent. It does not explain how Salas received puncture wounds, how Stangeland ended up on the basketball court with Salas and Neff, why Officer Curry deployed an instantaneous blast grenade, or the source of the shank.

Based on the foregoing, Stangeland did not establish good cause for *Pitchess* relief.

**V. Prior Serious Felony Enhancements.**

The trial court imposed five-year serious felony enhancements on each defendant pursuant to section 667, subdivision (a). While these appeals were pending, the Governor signed SB No. 1393 and thereby amended sections 667 and 1385 to give trial courts discretion during sentencing to strike or dismiss five-year serious felony enhancements. (See Stats. 2018, ch. 1013, §§ 1–2; *People v. Garcia* (2018) 28 Cal.App.5th 961, 971 (*Garcia*).) SB No. 1393 was effective on January 1, 2019, and it is retroactive to cases that are not yet final. (*Garcia, supra*, at p. 971.)

At oral argument, Neff and Stangeland requested that we remand this matter back to the trial court to exercise its discretion under SB No. 1393. The People did not voice any objection to the requests. Based on this requests, the matter is remanded in light of SB No. 1393.

### **DISPOSITION**

As to Stangeland, the conviction on count 1 is affirmed but the conviction on count 2 and the great bodily injury enhancement are reversed. As to Neff, the great bodily injury enhancement is reversed; in all other respects, his convictions are affirmed. The matter is remanded for resentencing of both Neff and Stangeland. In connection with the resentencing, the trial court shall consider whether to strike or dismiss the five-year serious felony enhancements pursuant to the discretion it is afforded by SB No. 1393.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

\_\_\_\_\_, J.  
ASHMANN-GERST

We concur:

\_\_\_\_\_, P. J.  
LUI

\_\_\_\_\_, J.  
HOFFSTADT